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OFFICE OF PETITION

In re Application of :
Dongyun Lee et al :
Application No. 10/045,297 :
Filed: November 7, 2001 :
Attorney Docket No. 594728112US :
DECISION ON PETITION
UNDER 37 CFR 1.137(b)

This is a decision on the petition under 37 CFR 1.137(b), filed July 3, 2003, to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is dismissed as **MOOT**.

The record disclosed that, on November 7, 2001, the date of filing of the instant application, petitioner indicated on the Utility Patent Application Transmittal that a Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) was filed on the same day. A review of the file record discloses that there is no indication that applicants had in fact submitted a nonpublication request certifying that "the invention disclosed in the attached **application has not and will not** be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication at eighteen months after filing."

Petitioner now requests under 35 U.S.C. § 122(b)(2)(B)(ii) that the Request and Certification Under 35 U.S.C. § 122(b)(2)(B)(i) be rescinded and the application be revived because this application became abandoned for failure to notify the USPTO within 45 days of the filing of a corresponding international or foreign application.

Where an applicant makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(ii)) the nonpublication request **before or on the date a counterpart application is filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request had never been made. See

Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv), 1272 OG 1 (July 1, 2003), available at <http://www.uspto.gov/web/patents/patog/week26/>.

In the instant application, since the record fails to disclose that a Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) was present on filing the application, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.

in view of the above, the petition fee of \$1,300.00 is being credited to Deposit Account No. 50-0665 as authorized.

This application is being forwarded to Technology Center 2188 for examination in due course.

Any inquiries concerning this decision may be directed to Wan Laymon at (703) 306-5685.



Frances Hicks
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for Patent Examination Policy